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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/022,800

12/18/2001

John David Russell

FGTI-021PUS

7311

7590

07/27/2006

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EXAMINER

KWON, JOHN

ART UNIT

PAPER NUMBER

3747

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

### Application No.

10/022,800

### Applicant(s)

RUSSELL ET AL.

### Examiner

John T. Kwon

### Art Unit

3747

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on RCE filed 13 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 43,44,63 and 64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 43,44,63 and 64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43, 44, 63 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mendler (US 6 125 801) in view of Williams (US 4 592 309) and Vorih (US 6 152 104).

Mendler discloses an intake manifold and an outlet control device couple to the manifold for controlling flow exiting the manifold and entering at least one cylinder of the engine by adjusting valve timing in an internal combustion engine. However, Mendler does not show the use of a valve lift adjustment. Williams shows that determining a desired engine output, calculating a desired cylinder charge and adjusting at least valve lift of the outlet control device is old and well known in the art (col. 6, lines 63-70, col. 8, lines 64-70). Since the prior art references art from the same field of endeavor, the purpose disclosed by Williams would have been recognized in the pertinent art of Mendler. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to provide the device of Mendler with the valve lift adjustment as taught by Williams. Mendler as modified as explained above shows the control device couple to the manifold for controlling flow exiting the manifold and entering at least one cylinder of the engine by adjusting valve timing in an internal combustion engine, but does not show that the valve adjustment during engine operation. Vorih shows that the valve adjustment during engine operation is old and well known in the art (Col. 2, line 51-Col. 3, line

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30). Since the prior art references art from the same field of endeavor, the purpose disclosed by Vorih would have been recognized in the pertinent art of Mendler. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to provide the device of Mendler with the valve adjustment during engine operation as taught by Vorih.

Claims 43, 44, 63 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshikawa (US 5 913 298) in view of Williams (US 4 592 309). Yoshikawa discloses an intake manifold and an outlet control device couple to the manifold for controlling flow exiting the manifold and entering at least one cylinder of the engine by adjusting valve timing in an internal combustion engine. However, Yoshikawa does not show the use of a valve lift adjustment. Williams shows that determining a desired engine output, calculating a desired cylinder charge and adjusting at least valve lift of the outlet control device is old and well known in the art (col. 6, lines 63-70, col. 8, lines 64-70). Since the prior art references art from the same field of endeavor, the purpose disclosed by Williams would have been recognized in the pertinent art of Yoshikawa. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to provide the device of Yoshikawa with the valve lift adjustment as taught by Williams. Yoshikawa as modified as explained above shows the control device couple to the manifold for controlling flow exiting the manifold and entering at least one cylinder of the engine by adjusting valve timing in an internal combustion engine, but does not show that the valve adjustment during engine operation. Vorih shows that the valve adjustment during engine operation is old and well known in the art (Col. 2, line 51-Col. 3, line 30). Since

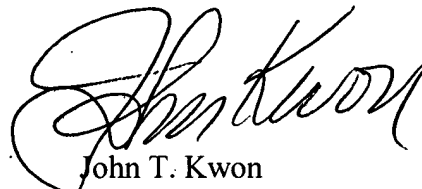
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the prior art references art from the same field of endeavor, the purpose disclosed by Vorih would have been recognized in the pertinent art of Yoshikawa. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to provide the device of Yoshikawa with the valve adjustment during engine operation as taught by Vorih.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John T. Kwon whose telephone number is (571) 272-4846. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Cronin can be reached on (571) 272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
John T. Kwon  
Primary Examiner  
Art Unit 3747

July 21, 2006